

Application No. 09/868,177
Amldt dated October 7, 2004
Reply to Office Action of July 13, 2004

5

REMARKS/ARGUMENTS

The Examiner withdrew the finality of the prior action in view of a new rejection discussed below.

The applicants gratefully acknowledge the withdrawal of the prior objection to the specification.

The Examiner rejected claims 3, 5 to 14, 20 and 21 under 35 USC 112, first paragraph, on the basis that the specification, while enabling for the claimed immunogenic compositions, does not reasonably provide enablement for such compositions that are effective for the protection of the host against disease caused by RSV.

While not agreeing with the position taken by the Examiner, claim 3 has been amended to delete the "for" phrase from the claim.

Having regard thereto, it is submitted that claims 3, 5 to 14, 20 and 21 are fully enabled by the specification and hence the rejection thereof under 35 USC 112, first paragraph should be withdrawn.

The applicants gratefully acknowledge the withdrawal of several prior rejections, as follows:

- rejection of claims 1, 2, 5 to 18 and 20 under 35 USC 103(a) as being unpatentable over Cates et al, US Patent No. 6,020,182 (Cates US) in view of Smith et al, US Patent No. 5,762,939 and Webster et al, US Patent No. 5,824,536;

- rejection of claims 1, 2, 5 to 18 and 20 under 35 USC 103(a) as being unpatentable over Cates et al, WO 98/02457 (Cates PCT) in view of Smith et al, US Patent No. 5,762,939 and Webster et al, US Patent No. 5,824,536;

Application No. 09/868,177
Amdt. dated October 7, 2004
Reply to Office Action of July 13, 2004

6

- rejection of claims 1, 2, 6 to 14 and 20 under 35 USC 103(a) as being unpatentable over Cates US or Cates PCT and further in view of Payne, Vaccine, Vol. 16(1):92 to 98;
- rejection of claim 4 under 35 USC 103(a) as being unpatentable over Cates PCT in view of Andrianov, US Patent No. 5,494,673;
- rejection of claims 1, 2, 5 to 16 and 20 under 115 USC 103(a) as being unpatentable over Cates US or Cates PCT and further in view of Huebner, US Patent No. 5,612,037;
- rejection of claims 20 and 21 under 35 USC 103(a) as being unpatentable over Cates US in view of Smith and Webster or in view of Huebner and further in view of Murray et al, Hosp. Pract. 32(7): 87-8, 91-4;
- rejection of claims 20 and 21 under 35 USC 103(a) as being unpatentable over Cates US or Cates PCT in view of Smith and Webster, or in view of Huebner, and further in view of Potash, US Patent No. 5,911,998;
- rejection of claims 20 and 21 under 35 USC 103(a) as being unpatentable over Cates US in view of Smith and Webster or in view of Huebner and further in view of Hall et al, J. Infect. Dis., 163:693-698; Crowe, Vaccine, 13:415-421; Groothuis, J. Infect. Dis. 177(2), 467-469 (1998); and Falsey, Vaccine, 14(13), 1214-1218 (1996);
- rejection of claims 1, 2, 4, 6 to 21 under 35 USC 103(a) as being obvious over claims 1 to 9, 13, 15 to 21, 23 and 26 of copending Application No. 09/950,655 (discussed in reference to the pre-Grant Publication of this application as PG Pub 2002/0136739) in view of Smith, Webster, Payne and Murray;

Application No. 09/868,177
Amtd. dated October 7, 2004
Reply to Office Action of July 13, 2004

7

- provisional rejection of claims 1 to 10, 12 to 16, 20 and 21 under 35 USC 101 as claiming the same invention as that of claims 1, 3 to 11, 13 to 18 and 20 of copending Application No. 09/213,770;
- rejection of claims 1, 2, 4 to 16, 18, 19, 20 and 21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 9 and 13 of US Patent No. 6,020,182, in view of Smith et al, US Patent No. 5,762,939 and Payne;
- rejection of claims 1, 2 and 5 to 21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 and 6 to 16 of US Patent No. 6,309,649 in view of Smith, US Patent No. 5,762,939 or Palese et al, US Patent No. 6,022,726;
- provisional rejection of claims 1, 11, 15 and 17 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 to 11, 13 to 18 and 20 of copending Application No. 09/213,770, or over these claims in view of Smith or Palese.
- provisional rejection of claims 1, 2, 4 and 6 to 21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 9, 13, 15 to 21, 23 and 26 of copending Application No. 09/950,655 (discussed in reference to the Pre-Grant Publication of this application as PG Pub 2002/0136739) in view of Smith, Webster, Payne and Murray.

Application No. 09/868,177
Amdt. dated October 7, 2004
Reply to Office Action of July 13, 2004

8

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,

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